

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SERIOUS USA, INC., et al.,

Plaintiff,

v.

CD DIGITAL CARD, et al.,

Defendants.

:
:
:
: CIVIL ACTION

:
: NO. 08 Civ. 4808 (GBD) (AJP)

: **JURY TRIAL DEMANDED**

:
: **DISC MAKERS' ANSWER**
: **AND AFFIRMATIVE DEFENSES**

Defendant, Audio and Video Labs, Inc. d/b/a Disc Makers, through counsel, hereby respectfully submits this Answer with Affirmative Defenses to Plaintiff's Complaint.

THE PARTIES

1. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

2. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

3. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

4. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

5. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

6. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

7. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

8. Denied. Defendant is Audio and Video Labs, Inc., a New Jersey corporation, doing business as Disc Makers.

9. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

10. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

11. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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21. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

22. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

JURISDICTION AND VENUE

23. Disc Makers does not contest jurisdiction.

24. Disc Makers does not contest venue.

PATENTS IN SUIT

25. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

26. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

27. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

28. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

29. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

30. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

31. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

32. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

33. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

COUNT I

34. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

35. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

36. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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40. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

41. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

42. Denied.

43. Denied.

44. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

45. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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61. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

COUNT II

62. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

63. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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68. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

69. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

70. Denied.

71. Denied.

72. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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COUNT III

90. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

91. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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96. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

97. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

98. Denied.

99. Denied.

100. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

101. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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COUNT IV

118. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

119. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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124. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

125. Denied. Disc Makers contests the validity and enforceability of the patents described in Plaintiffs' Complaint.

126. Denied.

127. Denied.

128. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

129. Disc Makers lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph.

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COUNT V

146. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

147. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

148. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

149. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

150. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

151. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

152. Insofar as Disc Makers is not a party to Count V of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

COUNT VI

153. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

154. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

155. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

156. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

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158. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

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163. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

164. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

165. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

166. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

167. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

168. Insofar as Disc Makers is not a party to Count VI of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

COUNT VII

169. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

170. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

171. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

172. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

173. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

174. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

175. Insofar as Disc Makers is not a party to Count VII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

COUNT VIII

176. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

177. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

178. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

179. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

180. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

181. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

182. Insofar as Disc Makers is not a party to Count VIII of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

COUNT IX

183. Insofar as Disc Makers is not a party to Count IX of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

184. Insofar as Disc Makers is not a party to Count IX of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

185. Insofar as Disc Makers is not a party to Count IX of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

186. Insofar as Disc Makers is not a party to Count IX of Plaintiff's Complaint, Disc Makers generally denies the allegations of this count.

AFFIRMATIVE DEFENSES

Disc Makers raises the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs claims against Disc Makers based on the '404 Patent, '124 Patent, '988 Patent and/or '696 Patent are barred, in whole in part, because the claims of said patents are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

SECOND AFFIRMATIVE DEFENSE

The '404 Patent, '124 Patent, '988 Patent and/or '696 Patent are unenforceable because Plaintiffs and/or their predecessors failed to disclose to the Patent Office during the prosecution of said patents all non-cumulative, material prior art of which Plaintiffs and/or their predecessors were aware.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims for patent infringement against Disc Makers are precluded to the extent that any of the allegedly infringing products are supplied, directly or indirectly, to Disc Makers by an entity or entities having an express or implied license to the patents in suit.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims may be barred, in whole or in part, by the doctrine of patent exhaustion.

FIFTH AFFIRMATIVE DEFENSE

Insofar as Plaintiffs have been aware of Disc Makers' activities for several years prior to institution of suit, Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, estoppel and/or laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim against Disc Makers upon which relief may be granted.

SEVENTH AFFIRMATIVE DEFENSE

Disc Makers is indemnified against any recovery by Plaintiffs pursuant to the Uniform Commercial Code and other applicable law.

EIGHTH AFFIRMATIVE DEFENSE

Disc Makers reserves all affirmative defenses under Federal Rule of Civil Procedure 8(c), the Patent Laws of the United State and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation of this case.

PRAYER FOR RELIEF

WHEREFORE, Disc Makers respectfully requests that this Court award the following:

- (a) enter judgment in favor of Disc Makers and against Plaintiffs;
- (b) dismiss the Complaint with prejudice;
- (c) find that the patents in suit are invalid and/or unenforceable against Disc Makers;
- (d) find that this is an exceptional case under the Patent Laws of the United States, and thus award Disc Makers its reasonable attorney's fees and other costs incurred in defending this case; and
- (e) award such further relief as the Court finds proper.

Dated: New York, New York
July 15, 2008

Respectfully submitted,

/s/ David S. Frydman
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